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FIRST GENE	RAL COUNSEL'S REPORT
	MID. 6221
	MUR: 6221
	DATE RECEIVED: October 19, 2009 DATE ACTIVATED: January 5, 2010
	LAST RESPONSE RECEIVED: Dec. 9, 2009
	LASI RESPONSE RECEIVED: Dec. 9, 2009
	EXPIRATION OF SOL: Earliest January 26,
	2012/Latest October 31, 2013
COMPLAINANT:	William James Scoggin
RESPONDENTS:	Transfund PAC and Rod B. Kassir,
	in his official capacity as treasurer
	Kilpatrick for United States Congress and
	Carl Stafford, in his official capacity as treasurer
	Dan Seals for Congress and Harry Pascal, in his
	official capacity as treasurer
	Arthur Blackwell
RELEVANT STATUTES	
AND REGULATIONS:	
	2 U.S.C. § 441a
	11 C.F.R. § 103.3(b)
	11 C.F.R. § 100.5(e)(3)
	11 C.F.R. § 110.1
	11 C.F.R. § 110.2
	11 C.F.R. § 110.6
	11 C.F.R. § 110.9
INTERNAL REPORTS CHECKED:	Disclosure Reports
OTHER AGENCIES CHECKED:	N/A
	CELA CELA FIRST GENE COMPLAINANT: RESPONDENTS: RELEVANT STATUTES AND REGULATIONS:

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I. INTRODUCTION

This matter arose out of a complaint alleging that Transfund PAC ("Transfund" or "PAC"), Representative Carolyn Kilpatrick's leadership PAC, improperly filed a "Notification of Multicandidate Status" (FEC Form 1M) with the Federal Election Commission ("Commission" or "FEC") without meeting the qualification requirements for a multicandidate committee. The complaint alleges that because Transfund did not qualify as a multicandidate committee and thereby gain eligibility for a higher limit on its contributions, Transfund made an excessive contribution when it contributed \$2,000 on September 30, 2008, and \$1,000 on October 31, 2008, to Dan Seals for Congress ("Seals Committee"), and made an excessive contribution to Kilpatrick for United States Congress ("Kilpatrick Committee") on July 16, 2008, when the PAC made two contributions of \$5,000 each to that committee. Complaint at 1-2. Additionally, the complaint states that an individual named Arthur Blackwell made an excessive contribution to the Kilpatrick Committee by making an earmarked contribution to the Kilpatrick campaign via Transfund. Id. at 2. In a joint response, Transfund and the Kilpatrick Committee deny the allegations and explain that the PAC achieved multicandidate status on July 1, 2008, after having been in existence for at least six months, contributing to more than five federal candidates, and receiving contributions from fifty-one contributors, pursuant to 2 U.S.C. § 441a(a)(4) and 11 C.F.R. § 100.5(e)(3). Transfund and Kilpatrick Response ("Transfund Response") at 2 and Exhibits A. B and C. As such, the PAC's contributions to the Seals and Kilpatrick Committees did not exceed the limits for multicandidate committees. In addition, Respondents deny that the Kilpatrick Committee received an excessive contribution from Blackwell as a result of an

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- 1 earmarked contribution, as there are no facts to suggest that Blackwell retained control over his
- 2 contributions or had actual knowledge that Transfund would contribute to the Kilpatrick
- 3 Committee. Id. at 2-3. Although notified, Blackwell did not respond to the complaint. 1
- 4 The Seals Committee responds that until receipt of the complaint, it was not aware that
- 5 Transfund may not have qualified for multicandidate committee status. Seals Committee
- 6 Response at 1-2. Upon receipt of Transfund's contribution, the committee's treasurer verified
 - the legitimacy of the PAC by reviewing Transfund's Form 1M on the FEC's website. Id. at 1.
- 8 However, upon receipt of the complaint, the Seals Committee refunded Transfund's allegedly
- 9 excessive contribution totaling \$700, apparently out of an abundance of caution. Id. at 1-2 and
- 10 Exhibit D.

As discussed in further detail below, Transfund properly qualified as a multicandidate committee. Thus, the PAC's contributions to the Seals Committee and the Kilpatrick Committee were not excessive. In addition, there is no information to support the allegation that Blackwell made an earmarked contribution to the Kilpatrick Committee through Transfund, which would have resulted in an excessive individual contribution by Blackwell to the Kilpatrick campaign. Accordingly, we recommend that the Commission find no reason to believe that Transfund violated 2 U.S.C. § 441a(a)(2)(A); that the Seals Committee violated 2 U.S.C. § 441a(f); that the Kilpatrick Committee violated 2 U.S.C. § 441a(a).

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A review of publicly available information revealed that Blackwell is currently facing felony criminal charges for making \$264,000 in authorized payments to himself from government funds while he served as the Emergency Financial Manager for the City of Highland Park, Michigan. Blackwell pleads not guilty to embezzlement, The Associated Press, Jan. 15, 2010. There appears to be no connection between those activities and this matter.

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II. FACTUAL AND LEGAL ANALYSIS

2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

2 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no 3 person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office which, in the apprepate, exceed \$2,300 for the 4 5 2008 election cycle, or to any other political committee in any calendar year which, in aggregate, 6 exceed \$5,000. 2 U.S.C. § 441a(a)(1)(A) and (C); 11 C.F.R. § 110.1(b) and (d); Price Index 7 Increases for Expenditure and Contribution Limitations, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007). 8 Additionally, multicandidate committees are prohibited from making contributions in excess of 9 \$5,000 to any candidate and his or her authorized committee with respect to any election for federal office. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b). Candidates and their committees 10 11 are prohibited from knowingly accepting any contributions in excess of the Act's limitations.

A. Transfund's Multicandidate Committee Status

Transfund, the leadership PAC for Representative Carolyn Kilpatrick, has been registered with the Commission since December 16, 2006. See Statement of Organization. The Act defines a "leadership PAC" as a political committee that is directly or indirectly established, financed, maintained, or controlled by a candidate for Federal office or an individual holding Federal office, but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual. 2 U.S.C. § 434(i)(8)(B). Although associated with a particular candidate, a leadership PAC is not legally affiliated with the candidate's principal campaign committee and is treated as a non-connected

- 1 committee. See 11 C.F.R. § 100.5(g)(4); Final Rules and Explanation and Justification on
- 2 Leadership PACs, 68 Fed. Reg. 67013 (Dec. 1, 2003).
- 3 A leadership PAC can qualify as a multicandidate committee. A multicandidate
- 4 committee is a political committee that (1) has been registered with the Commission for at least
- 5 six months; (2) has received contributions from more than 50 persons; and (3) has made
- 6 contributions to at least five federal candidates. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).
- 7 A committee shall certify to the Commission that it has satisfied the criteria for becoming a
- 8 multicandidate committee by filing an FEC Form 1M (Notification of Multicandidate Status)
- 9 with the Commission within 10 days of the date that the committee meets these criteria.
- 10 11 C.F.R. § 102.2(a)(3).
- Once qualified as such, a multicandidate committee may give a candidate up to \$5,000
- per election and can receive up to \$5,000 per calendar year from a contributor. 11 C.F.R.
- 13 §§ 110.1(d) and 110.2(b). A multicandidate committee that makes a contribution is required to
- 14 notify the recipient in writing of its status as a multicandidate committee. 11 C.F.R.
- 15 § 110.2(a)(2).
- The complaint alleges that Transfund claimed multicandidate committee status in July
- 17 2008 without having fully qualified, thus making some of the PAC's contributions excessive.
- 18 Specifically, the complaint questions whether the PAC received more than 50 contributions by
- 19 July 1, 2008, as stated on Transfund's Form IM. Complaint at 1. The complaint states that a
- 20 review of the committee's disclosure reports indicates that the PAC did not receive contributions
- 21 from 51 persons during the 2008 election cycle, but rather only received contributions from 47
- donors by June 30, 2008. Id. In addition, the complaint alleges that two persons disclosed on

1 the PAC's reports contributed six times and were counted as six persons toward the 51

2 contributor requirement. Id.

Based on a review of relevant materials, it appears that Transfund met the requirements for multicandidate committee status. 2 U.S.C. § 441a(a)(4). Because it filed its first Statement of Organization with the Commission on December 19, 2006, Transfund had been registered with the Commission for more than six months at the time it sought multicandidate committee status. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3). Further, according to its FEC disclosure reports, by the Fall of 2007 it had already made contributions to more than 5 federal candidates. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3); see Transfund's 2007 Mid-Year and Year End Reports and FEC Form 1M dated July 14, 2008.

Based on the available information, it appears that Transfund had 51 contributors at the time period at issue. Contrary to the complaint's allegations, contributors do not appear to have been counted more than once toward the multicandidate committee status contributor requirement. Transfund's disclosure reports showed that it had received 49 itemized contributions by August 1, 2008. See 2006 Year End Report, 2007 Mid-Year Report, 2007 Year End Report, 2008 April Quarterly Report, 2008 July Quarterly Report, and 2008 October Quarterly Report. However, Transfund clarified in its response to the complaint that it received two contributions on January 26, 2007, and May 23, 2008, in the amounts of \$100 and \$5, respectively, which were not required to be itemized in its disclosure reports but would count toward its contributor requirement for multicandidate committee status.² 2 U.S.C. § 434(b)(3);

² As part of its response, Transfund produced a list of all 51 contributions, setting forth the contributors' names, dates and amounts. Transfund Response at Exhibit A.

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- 1 Transfund Response at 2. This clarification is consistent with information on the PAC's
- 2 Detailed Summary Pages of its disclosure reports. Its 2007 Mid-Year Report, filed with the
- 3 Commission on July 31, 2007, disclosed \$100 in uniternized receipts on page 3 of the Detailed
- 4 Summary Pages. Additionally, Transfund's 2008 July Quarterly Report, filed with the
- 5 Commission on July 14, 2008, reflects \$5 in unitemized receipts on page 3 of the Detailed
- 6 Summary Pages.

Finally, it appears that Transfund properly filed its Form 1M with the Commission after, not before, meeting the contributor requirement for multicandidate committee status. Although Transfund's disclosure reports indicate that it received a contribution from its fifty-first contributor on August 1, 2008—instead of July 1, 2008—Transfund explains that it had incorrectly reported the date of receipt of contributions from contributors 50 and 51. Transfund Response at 2. According to Transfund, those contributions should have been reported as having been received on July 1, 2008. The PAC provided copies of the relevant checks in support of its claim. See Transfund Response at Exhibit B. The checks from Matthew Moroun and Nora Moroun were dated June 30, 2008, but handwritten notations next to the copies of each check indicate that they were received on July 1. Id. In its response, the PAC acknowledges that the August 1, 2008, date shown on its disclosure report was a reporting error and states that it would amend the relevant report to correct this error. Id. at 2. As of the writing of this report, the PAC has not yet amended its 2008 October Quarterly Report to reflect the correct date of the contributions from Matthew and Nora Moroum.

A review of Transfund's disclosure reports also revealed the receipt of two contributions from "NGP Software," the PAC's compliance software provider. However, based on identical disbursements the PAC made to NGP Software on the same dates, it appears that the report of receipts from NGP Software appears to have been an error.

Based on the information discussed above, Transfund appears to have qualified as a multicandidate committee by being registered with the Commission for over six months, having contributed to at least five federal candidates, and having received contributions from over 50 persons. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).

Although it appears that Transfund properly qualified for multicandidate status,

Transfund's disclosure reports created doubts about the date on which Transfund achieved this
status, whether it timely filed its Form 1M declaring its qualification, and whether it properly
notified its contribution recipients of its multicandidate status. Nevertheless, even taken
together, these irregularities do not warrant proceeding further because the apparent deficiencies
involve small amounts or short time periods, and the major allegation in this matter of whether
Transfund achieved multicandidate status lacks support.

Specifically, Transfund's failure to accurately disclose the date of receipt of its 51st contribution in its reports to the Commission resulted in questions over whether the PAC had met the requirements for multicandidate committee status by July 14, 2008, the date that it filed its Form 1M. Because Transfund's disclosure reports did not reflect 51 itemized contributions by July 1, 2008, the Reports Analysis Division ("RAD") sent the PAC Requests for Additional Information ("RFAIs") dated August 8, 2008, and October 31, 2008, inquiring whether Transfund met the requirements for certification as a multicandidate committee and whether it had made excessive contributions. Transfund never responded, either orally or in writing, to the RFAIs.⁴ Further, because Transfund appears to have qualified as a multicandidate committee on

⁴ Had Transfund responded to the RFAIs, it is possible that this complaint dated October 12, 2009, would never have been filed.

- 1 July 1, 2008, it was required to file Form 1M with the Commission within ten days. Transfund
- 2 filed its Form 1M with the Commission on July 14, 2008, thirteen days after qualification for
- 3 multicandidate status. However, RAD did not refer the matter to OGC because it did not meet
- 4 the division's internal referral thresholds, and given the small amounts and short time periods
- 5 involved, we do not recommend proceeding further.

After qualifying as a multicandidate committee, Transfund was also required to notify

contribution recipients in writing of its status as a multicandidate committee. 11 C.F.R.

- 8 § 110.2(a)(2). Other than the Seals Committee's statement that Transfund did not provide such
- 9 notification along with its contributions to the Seals Committee, we have no information whether
- 10 Transfund notified contribution recipients of its status as a multicandidate committee. Seals
- 11 Committee Response at 1-2. Nevertheless, because it appears that the PAC did not make
- 12 excessive contributions, it would not be a good use of Commission resources to pursue this issue
- 13 further either.

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B. Alleged Excessive Contributions by Transfund

Based on its allegation that Transfund did not properly qualify as a multicandidate committee, the complaint concludes that the PAC's contributions to the Seals Committee and the Kilpatrick Committee were limited to the amounts set for persons other than multicandidate committees (e.g., \$2,300 in 2008). 2 U.S.C. § 441a(a)(1)(A). The contributions at issue are as follows:

DATE	COMMITTEE	AMOUNT	ELECTION
7/16/2008	Kilpatrick for United States Congress	\$5,000	Primary
7/16/2008	Kilpatrick for United States Congress	\$5,000	General
9/30/2008	Dan Seals for Congress	\$2,000	General
10/31/2008	Dan Seals for Congress	\$1,000	General

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- 1 Because it properly qualified as a multicandidate committee, Transfund was permitted to make
- 2 contributions to candidates of up to \$5,000 per election. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R.
- 3 § 110.2(b). Therefore, its contributions to the Kilpatrick Committee of \$5,000 for the primary
- 4 election and \$5,000 for the general election, as well as its contributions to the Seals Committee
- 5 totaling \$3,000 for the general election, did not exceed the contribution limits of the Act. As
- such, the Seals Committee was not required to refund Transfund's contribution. Supra at 3.
- 7 Therefore, we recommend that the Commission find no reason to believe that Transfund PAC
- 8 violated 2 U.S.C. § 441a(2)(A), or that the Kilpatrick Committee or the Seals Committee
- 9 violated 2 U.S.C. § 441a(f).

C. Alleged Earmarked and Excessive Contribution by Blackwell

The complaint also alleges that Arthur Blackwell made an excessive contribution to Kilpatrick's campaign through a \$5,000 contribution to Transfund that he made on January 26, 2007. Complaint at 2. The complaint asserts that Blackwell's \$5,000 contribution to Transfund was an earmarked contribution made through the PAC to Kilpatrick, because Blackwell knew that his contribution to Transfund would be used to support Kilpatrick. See 11 C.F.R. § 110.1(h)(1)-(3). Because an earmarked contribution counts against the contributor's contribution limit for the recipient candidate, 11 C.F.R. § 110.6(a), if the contribution was earmarked, it would be subject to Blackwell's individual's contribution limit of \$2,300 per election to a candidate committee during the 2008 election cycle, and it would not count against his limit for contributing to Transfund. 2 U.S.C. § 441a(a)(1)(A) and 441a(a)(8). If Blackwell's contribution was not earmarked, then he was permitted to contribute \$5,000 per calendar year to Transfund, an unauthorized committee, as long as he did not possess actual knowledge that his

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- 1 contribution would be used for Kilpatrick's campaign and he did not retain control of the funds.
- 2 See 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(h)(1)-(3). As discussed below, there is no
- 3 available information to support the complainant's allegations that Blackwell's contribution to
- 4 Transfund was either earmarked or excessive.

A contribution is earmarked when there is "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b). In the past, the Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor. *See*MURs 4831/5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines); *see also*, MUR 5732 (Matt Brown for U.S. Senate),

MUR 5520 (Republican Party of Louisiana/Tauzin), MUR 5445 (Davis), and MUR 4643

(Democratic Party of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear designation, instruction, or encumbrance by the donor). The Commission has rejected earmarking claims even where the timing of the contributions at issue appeared to be a significant factor, but the contributions lacked a clear designation or instruction. *See* MUR 5445 (Davis) and MUR 4643 (Democratic Party of New Mexico).

Additionally, the Commission's regulations permit an individual to contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee, which has supported, or anticipates supporting, the same candidate in the same election without aggregation, as long as (1) the political committee is not

the candidate's principal campaign committee, or other authorized committee or single candidate 1 committee; (2) the contributor does not give with the knowledge that a substantial portion will be 2 3 contributed to, or expended on behalf of, that candidate for the same election; and (3) the 4 contributor does not retain control over the funds. See 11 C.F.R. § 110,1(h)(1)-(3). See also 5 Explanation and Justification of 11 C.F.R. § 110.1(h), 52 Fed. Reg. 44,130 (January 9, 1987). 6 In order for a contribution to an unauthorized committee to be aggregated with an 7 individual's contribution limits for a particular candidate, the Commission has required that the 8 contributor have "actual knowledge" of the committee's plans to use his or her contribution to 9 contribute to or expend funds on behalf of the candidate to meet the requirements of section 10 110.1(h)(2). See MURs 5732 (Matt Brown for U.S. Senate), 5678 (Liffrig for Senate), 5445 11 (Davis), and 5019 (Keystone Federal PAC) (although contributors were likely aware that the 12 PAC would contemporaneously contribute to the candidates' committees there was no evidence 13 that the contributors actually knew that a portion of their contributions would be given to 14 specific candidates). See also MUR 5881 (Citizens Club for Growth) (rejecting claim that 15 contributors had actual knowledge based on text of solicitations). But see MURs 4633/4634 16 (Triad Management Services) (Commission found reason to believe and opened an investigation 17 where circumstances, including proximity in timing and similarity in contribution amounts, as 18 well as information about communications between contributors and the respondent, raised 19 substantial questions of whether contributors had knowledge that the PACs would use their 20 contributions to support specific candidates). Thus, according to the Commission's more recent

decisions, a donor's contribution to an unauthorized committee may result in an excessive

contribution to a candidate where the contributor actually knows that a substantial portion of his contribution will go to the candidate, even if it has not been earmarked.

There is no information to demonstrate that Blackwell's contribution of January 26, 2007, to Transfund was earmarked for the Kilpatrick Committee or that Blackwell actually knew his contribution would be used for a candidate. There is no allegation or available information indicating that Blackwell may have designated his contribution to be used exclusively for the benefit of the Kilpatrick Committee. 11 C.F.R. § 110.6(b). Similarly, there is no information indicating that Blackwell had actual knowledge that his contribution to Transfund would be used for the benefit of the Kilpatrick campaign or that Blackwell retained control over his contribution to Transfund in any way. 11 C.F.R. § 110.1(h)(2)-(3).

Based on his past contributions, Blackwell appears to be a long-time supporter of Kilpatrick with contributions going as far back as 1997, but there is no history of any excessive contributions. FEC records show that during the 2008 election cycle, Blackwell contributed a total of \$1,500 to the Kilpatrick Committee (\$500 on November 2, 2007, and \$1,000 on June 30, 2008). Although Blackwell might reasonably infer that some portion of his contribution to Kilpatrick's leadership PAC might be used to support Kilpatrick, such an inference alone does not suggest that Blackwell had "actual knowledge" that Transfund would use his contribution to support Kilpatrick. See, e.g., MUR 5968 (John Shadegg's Friends) and MUR 5732 (Matt Brown for U.S. Senate) (stating that although donors solicited by a candidate to contribute to state parties might reasonably infer that their contributions would be used to benefit that candidate, such information was insufficient for finding reason to believe that 11 C.F.R. § 110.1(h) had been violated).

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1 Finally, there are no additional factors that point to the possibility that Blackwell 2 intended his contribution to be used for the Kilpatrick Committee. Since its organization in 3 2006, Transfund has contributed to thirty federal candidates other than Kilpatrick. In fact, Transfund did not make a contribution to the Kilpatrick Committee until July 16, 2008, over one 5 year after the date of Blackwell's January 26, 2007 contribution. As a result, unless he retained 6 control of his contribution to Transfund, there was no way for Blackwell to know whether it 7 would be used for the benefit of Kilpatrick. 8 In sum, based on the available information, it does not appear that Arthur Blackwell 9 made an earmarked contribution as defined in 11 C.F.R. § 110.6(b) or made his contribution to 10 Transfund with the requisite knowledge, as set forth in section 110.1(h)(2), to trigger a violation of 2 U.S.C. § 441s(a). Neither is there information suggesting that Blackwell retained control 11 12 over his contribution once it was in Transfund's possession. 11 C.F.R. § 110.1(h)(3). 13 Accordingly, we recommend that the Commission find no reason to believe that Arthur 14 Blackwell violated 2 U.S.C. § 441a(a) or that the Kilpatrick Committee knowingly received an 15 excessive contribution in violation of 2 U.S.C. § 441a(f). 16 III. RECOMMENDATIONS 17 Find no reason to believe that Transfund PAC and Rod B. Kassir, in his official 1. capacity as treasurer, violated 2 U.S.C. § 441a(2)(A). 18 19 20 2. Find no reason to believe that Kilpatrick for United States Congress and Carl Stafford, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f). 21 22 23 Find no reason to believe that Dan Seals for Congress and Harry Pascal, in his 3. official capacity as treasurer, violated 2 U.S.C. § 441a(f). 24 25 26 4. Find no reason to believe that Arthur Blackwell violated 2 U.S.C. § 441a(a). 27 Approve the attached Factual and Legal Analyses.

1 2	6 .	Approve the appropriate letters.		
3	7.	Close the file.		
4 5 6 7 8				Thomasenia P. Duncan General Counsel
9 10 11 12 13	3/30/10 Date	<u> </u>	BY:	Stephen Gura Deputy Associate General Counsel for Enforcement
15 16 17 18				- Wet to Rela
19 20 21 22 23				Peter G. Blumberg Assistant General Counsel
24 25 26 27				Ana J. Peña-Wallace
28 29 30 31 32				Attorney
33 34				